

REMARKS

This is a full and timely response to the outstanding final Office Action mailed September 3, 2003 (Paper No. 10). Claims 5-6, 8-22, and 24-42 remain pending in the present application. Claims 5, 8, 16, 19, 22, 24, 27, 28, 32, 35, 38, 39, 40, and 42 are directly amended. Claims 7 and 23 are cancelled. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

I. Interview Summary

Applicants first wish to express their sincere appreciation for the time the Examiner spent with Applicants' attorney, Minh Nguyen, during a telephone discussion on October 8, 2003, regarding the final Office Action mailed on September 3, 2003. Applicants' attorney provided an annotated version of the claims for discussion purposes only. The discussion addressed the claims in the annotated version of the claims. It should be noted that the features discussed in the annotated version of the claims are now amended in the present claims. During that conversation, the Examiner indicated that it would be potentially beneficial for Applicants to make the amendments; however, the Examiner indicated that an additional search and examination would be needed if the claims were amended. Thus, Applicants respectfully request that Examiner carefully consider this response and the amendments.

II. Status of the Application

Applicants appreciate the Examiner's withdrawal of the objections to the drawings, abstract and specification due to Applicants' amendments in Applicants' Response (Paper No. 9). Applicants further appreciate the Examiner's agreement to hold the objection to the specification regarding the incorporation of an improper appendix in abeyance until allowance of the instant application.

III. Reply to Response to Argument

Applicants appreciate Examiner's response regarding claims 39, 40, and 42. Applicants have amended the claims and respectfully submit that the cited reference fails to teach, disclose

or suggest each and every element of the claims. Consequently, Applicants respectfully request that the claims be allowed and the rejection be withdrawn for the reasons that follow.

The Office Action on page 5 alleged that Applicants' challenge to the Examiner's use of Official Notice has not sufficiently created the reasonable doubt necessary to switch the burden back to the Examiner in regard to producing references to support the Official Notice. Applicants would like to point out that under MPEP §2144.03, "Official Notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known." Thus, because Applicants do not consider the statements of Official Notice to be capable of instant and unquestionable demonstration, Applicants further address the Official Notice in the response that follows and further submit that the findings are not well-known because the Office Action does not provide "specific findings based on sound technical and scientific reasoning to support the conclusion," as required.

IV. Response to Claim Rejections Under 35 U.S.C. §102

Claims 39 and 40 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 5,923,552, to *Brown, et al.* A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each and every element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

Claim 39, as amended, recites:

A computer-implemented method for use in formation of a contract, comprising:
providing a contract template for assembling a bid package;
transmitting the bid package to contractors to facilitate the contractors in providing an offer for a particular job;
receiving offers from the contractors;
awarding the job to the contractor based on at least one previous bid made on the job;
evaluating the offers; and
awarding the contract.

(Emphasis Added)

Claim 40, as amended, recites:

A computer-implemented method for use in formation of a contract, comprising:
generating a bid;
sending the bid to contractors to facilitate the contractors in providing an offer for a particular job;
adding pricing and other information by contractors to the bid;
returning the bid by contractors;
retrieving at least one previous bid made on the job;
viewing and comparing bids returned by the contractors and previously made by the contractors;
awarding the contract to contractor having the most desirable bid.

(Emphasis Added)

Applicants respectfully submit that *Brown* fails to teach or disclose the above-quoted feature(s) of claims 39 and 40.

In fact, *Brown* discloses that the *Brown* Integrated Work Activity Calendar Subsystem is designed to “automatically accept or reject bid requests, depending on the nature of the bid requests and also depending on the availability of time in a network member’s schedule” (Emphasis Added, Col. 8, lines 28-34). *Brown* fails to teach or disclose at least the steps of “awarding the job to the contractor based on at least one previous bid made on the job”, as recited in claim 39, and “retrieving at least one previous bid made on the job; viewing and comparing bids returned by the contractors and previously made by the contractors”, as recited in claim 40. Consequently, for this reason, among others, Applicants respectfully request that claims 39 and 40 be allowed and the rejection be withdrawn.

V. Response to Claim Rejection Under 35 U.S.C. §103

In the Office Action, claims 5-38 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Inglesby* (“MES: who, when, and why”) in view of *Brown*. Claims 41 and 42 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Brown* as applied to claim 40.

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the prior art reference must suggest all features of the claimed invention to one of ordinary skill in the art.

See, e.g., In re Dow Chemical, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

A. Claim 5

Claim 5, as amended, recites:

A system for use in facilitating managing a job, the system comprising:

a bid and award application for generating bid packages for a job and for receiving completed bids, *wherein the bid and award application stores at least one previous bid that was made on the job and awards the job based on the at least one previous bid;*

a job entry application for defining at least one task within the job and-determining whether the task should be accomplished by the contractor;

a scheduling application for assigning personnel to the at least one task;

a materials management application for assigning any needed materials to the at least one task; and

an interface for receiving updates on the status of the at least one task.

(Emphasis Added)

Claim 5 has been amended to recite the above-emphasized feature of “the bid and award application stores at least one previous bid that was made on the job and awards the job based on the at least one previous bid”.

In rejecting claim 5 on page 10 of the Office Action, the Office Action admits that *Inglesby* fails to disclose a bid and award application and thus, the Office Action uses *Brown* to address this feature. In fact, *Brown* discloses that the *Brown* Integrated Work Activity Calendar Subsystem is designed to “automatically accept or reject bid requests, depending on the nature of the bid requests and also depending on the availability of time in a network member's schedule” (Emphasis Added, Col. 8, lines 28-34). *Brown* fails to teach, disclose or suggest at least the feature of “a bid and award application ... awards the job based on the at least one previous bid”, as recited in claim 5. Consequently, for this reason, among others, Applicants respectfully request that claim 5 be allowed and the rejection be withdrawn.

In addition, because *Brown* fails to teach, disclose or suggest the feature of "a bid and award application ...awards the job based on the at least one previous bid", Applicants respectfully submit that *Brown* further fails to teach, disclose or suggest at least the feature of "a bid and award application stores at least one previous bid that was made on the job", as recited in claim 5. Consequently, for this reason, among others, Applicants respectfully request that claim 5 be allowed and the rejection be withdrawn.

B. Claims 6, 8-15, and 20-21

Because independent claim 5 is allowable over the cited art of record, dependent claims 6, 8-15, and 20-21 are allowable as a matter of law for at least the reason that dependent claims 6, 8-15, and 20-21 contain all features and elements of their respective independent base claim. *See, e.g., In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, Applicants respectfully request that the rejection to dependent claims 6, 8-15, and 20-21 be withdrawn for this reason, among others.

C. Claims 16-18 and 32-34

Claim 16, as amended, recites the features of "if the billings vary from a billing expectation of the system, the variations are sent to a supervisor for approval, wherein upon approval of the supervisor or no variations, the billing and reporting application prepares an invoice for payment." Claim 32, as amended, recites the features of "if the billings vary from a billing expectation of the system, the variations are sent to a supervisor for approval, wherein upon approval of the supervisor or no variations, preparing an invoice for payment."

In rejecting claims 16 and 32, the Office Action admits that *Inglesby* fails to disclose a billing and report application and alleges that *Brown* "discloses the tracking of completion of work stages or tasks, presumably by network members whose bids were accepted and for which contracts were granted (Col. 8, lines 1-14 of *Brown*)" (Emphasis Added, page 11 of Office Action, Paper No. 10). The Office Action further takes Official Notice that it is well known in the art to withhold payment to a contractor until the contractor's services are fulfilled. This helps ensure that the entity paying for the requested services will indeed receive the promised services.

In fact, *Brown* discloses “a computer network system having a dynamic scheduling system for integrating schedules of separate business entities within an industry.... The present invention leaves the independence and management of individual entities intact, yet allows the whole industry to work as a single, efficient organization. Utilizing the present invention, a business entity may view or interact with information of other members of an entire industry. Each business continues to compete with other businesses in the industry, yet scheduling of activities, project management, and exchange of information necessary for the whole industry to function can become organized and efficient via the present electronic computer network system. To facilitative scheduling and project management across an entire industry, the present invention utilizes and enhances known scheduling techniques including critical path method (CPM) to allow each network member to maintain individual schedules yet synchronize relevant portions of these schedules with the schedules of other industry members” (Emphasis Added, Col. 3, lines 43-59). Further, “The Billing Services Subsystem 24 preferably tracks the usage of the Network Service Distribution System 20 for each network member and generates billing information for each network member” (Emphasis Added, Col. 6, lines 9-13 of *Brown*).

Apparently, *Brown* does not teach, disclose or suggest that the *Brown* computer network system determines whether the billings from the networks member vary from the billings expected in the system. Consequently, *Brown* fails to teach, disclose or suggest at least the feature of “if the billings vary from a billing expectation of the system, the variations are sent to a supervisor for approval, wherein upon approval of the supervisor or no variations, the billing and reporting application prepares an invoice for payment”, as recited in claim 16. Further, *Brown* fails to teach, disclose or suggest at least the feature of “if the billings vary from a billing expectation of the system, the variations are sent to a supervisor for approval, wherein upon approval the supervisor or no variations, preparing an invoice for payment”, as recited in claim 32. For this reason, among others, Applicants respectfully request that claims 16 and 32 be allowed and the rejection be withdrawn.

Further, because independent claims 16 and 32 are allowable over the cited art of record, dependent claims 17, 18, 33, and 34 are allowable as a matter of law for at least the reason that dependent claims 17, 18, 33, and 34 contain all features and elements of their respective independent base claim. *See, e.g., In re Fine*, supra. Accordingly, Applicants respectfully

request that the rejection to dependent claims 17, 18, 33, and 34 be withdrawn for this reason, among others.

D. Claims 19 and 35

Claim 19 recites the feature of “random sampling of the completed at least one task, the inspection application being capable of generating inspection schedules and managing results of the inspection.” Claim 35 recites the feature of “performing a random sampling of at least one completed task; and generating inspection schedules and managing results of the inspections.” In rejecting claims 19 and 35, the Office Action admits that *Inglesby* fails to disclose an inspection application for random sampling of the completed at least one task. In this regard, the Office Action takes Official Notice that quality control is very old and well known in the art of supply chain management.

Applicants respectfully assert that “It is never appropriate to rely solely on common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d 1879, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* At 1385, 59 USPQ2d at 1697. Consequently, because *Inglesby* fails to disclose a random sampling as recited in claims 19 and 35 and the rejection solely relies on the Official Notice as the principal evidence, Applicants respectfully submit that the Official Notice is improper. Thus, for this reason, among others, Applicants respectfully request that claims 19 and 35 be allowed and the rejection be withdrawn.

Although *Inglesby* appears to disclose monitoring of a manufacturing environment in order to make the overall supply chain associated with the manufacturing environment more sufficient as alleged on page 13 of the Office Action (Paper No. 10), *Inglesby* fails to teach, disclose or suggest random sampling of completed tasks, generating inspection schedules and managing results of the inspection. Therefore, Applicants respectfully submit that *Inglesby* fails to teach, disclose or suggest at least the feature of “random sampling of the completed at least one task, the inspection application being capable of generating inspection schedules and managing results of the inspection”, as recited in claim 19, and “performing a random sampling

of at least one completed task; and generating inspection schedules and managing results of the inspection.” Accordingly, for this reason, among others, Applicants respectfully submit that claims 19 and 35 are not obvious and so Applicants request that claims 19 and 35 be allowed and the rejection be withdrawn.

E. Claims 22 and 38

Claims 22 and 38, as amended, recite the feature of “awarding the job to the contractor based on at least one previous bid made on the job”. Applicants respectfully submit that *Inglesby* and *Brown* fail to teach, disclose or suggest the above-quoted step.

In rejecting claims 22 and 38, the Office Action refers to the same rejection as mentioned with reference to claims 5-15. In this regard, the Office Action admits that *Inglesby* fails to disclose a bid and award application and thus, Applicants use *Brown* to address this feature. In fact, *Brown* discloses that the Integrated Work Activity Calendar Subsystem is designed to “automatically accept or reject bid requests, depending on the nature of the bid requests and also depending on the availability of time in a network member’s schedule” (Emphasis Added, Col. 8, lines 28-34). *Brown* fails to teach, disclose, or suggest at least the steps of “awarding the job to the contractor based on at least one previous bid made on the job”, as recited in claims 22 and 38. Consequently, for this reason, among others, Applicants respectfully request that claims 22 and 38 be allowed and the rejection be withdrawn.

F. Claims 24-31 and 36-37

Because independent claim 22 is allowable over the cited art of record, dependent claims 24-31 and 36-37 are allowable as a matter of law for at least the reason that dependent claims 24-31 and 36-37 contain all features and elements of their respective independent base claim. See, e.g., *In re Finè*, supra. Accordingly, Applicants respectfully request that the rejection to dependent claims 24-31 and 36-37 be withdrawn for this reason, among others.

G. Claim 41

Because independent claim 40 is allowable over the cited art of record, dependent claim 41 is allowable as a matter of law for at least the reason that dependent claim 40 contains all features and elements of their respective independent base claim. *See, e.g., In re Fine*, supra. Accordingly, Applicants respectfully request that the rejection to dependent claim 41 be withdrawn for this reason, among others.

H. Claim 42

Claim 42, as amended, recites:

A system for use in formation of a contract, comprising:
a template for assembling a bid package to be sent to
contractors to facilitate the contractors in providing an offer for a
particular job;
*a data processor for communicating with contractors including
copying, encrypting, sending and printing the bid package and for retrieving at
least one previous bid made on the job; and
a comparator for evaluating responses to the bid package
based on the at least one previous bid.*

(Emphasis Added)

In rejecting claim 42, the Office Action admits that *Brown* does not expressly teach the use of a data processor for communicating with contractors including copying, encrypting, sending and printing the bid package. The Office Action instead takes Official Notice that it is old and well known in the art of bidding to copy, send, and print bid packages. The Office Action further takes Official Notice that it is old and well known in the art of crypt data in order to protect the confidentiality of the data. Based on these premises, the Examiner alleged that it would be obvious to one skilled in the art at the time of the Applicants' invention to incorporate with *Brown* the use of a data processor for communicating with contractors including copying, encrypting, sending, and printing the bid packages.

Applicants respectfully assert that "It is never appropriate to rely solely on common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d 1879, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* At 1385, 59 USPQ2d at 1697. Consequently, because *Inglesby* fails to disclose copying, encrypting,

sending, and printing the bid packages as recited in claim 42 and the Office Action solely relies on the Official Notice to reject claim 42, Applicants respectfully submit that the Official Notice is improper and that the rejection be withdrawn.

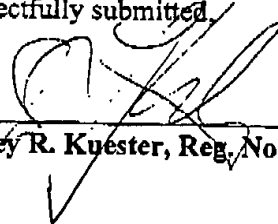
In addition, *Brown* discloses that the Integrated Work Activity Calendar Subsystem is designed to "automatically accept or reject bid requests, depending on the nature of the bid requests and also depending on the availability of time in a network member's schedule" (Emphasis Added, Col. 8, lines 28-34). Accordingly, *Brown* fails to teach, disclose, or suggest at least "a data processor ... for retrieving at least one previous bid made on the job; and a comparator for evaluating responses to the bid package based on the at least one previous bid" (Emphasis Added), as recited in claim 42. Consequently, for this reason, among others, Applicants respectfully request that claim 42 be allowed and the rejection be withdrawn.

Further, Applicants respectfully traverses the Examiner's rejection. In fact, *Brown* appears to suggest sending bid requests electronically to network members and accepting or rejecting bids automatically depending on the nature of the bid request (Col. 8, lines 28-34 of *Brown*). Applicants respectfully submit that *Brown* fails to teach, disclose or suggest at least the copying, encrypting, sending *and* printing the bid packages to facilitate the bidding process, as recited in claim 40. For this reason, among others, Applicants respectfully request that claim 42 be allowed and the rejection be withdrawn.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 5-6, 8-22, and 24-42 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned at (770) 933-9500.

Respectfully submitted,



Jeffrey R. Kuester, Reg. No. 34,367

**THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.**
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500